



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

RTID 0648-XA356

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification; request for comments.

SUMMARY: NMFS announces the receipt of an exempted fishing permit application titled, “*Year-round Coastwide Midwater Rockfish EFP: Monitoring and Minimizing Salmon Bycatch When Targeting Rockfish in the Shorebased IFQ Fishery, 2021-2022.*” The application, submitted by the West Coast Seafood Processors Association, Environmental Defense Fund, Oregon Trawl Commission, and Midwater Trawlers Cooperative, requests a permit to test whether removing certain gear, time, and area restrictions for vessels fishing under the West Coast Groundfish Trawl Rationalization Program’s Shorebased Individual Fishing Quota Program may impact the nature and extent of bycatch of prohibited species (*e.g.*, Chinook salmon). This exempted fishing permit would allow participating groundfish bottom and midwater trawl vessels more flexibility than allowed in current regulations to target pelagic rockfish species, such as widow, chilipepper, and yellowtail rockfish. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this

notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received no later than 5 p.m., local time on [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2020-0097, by the following method:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2020-0097, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments. The EFP application will be available under “Supporting and Related Materials” through the same link.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and would generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender would be publicly accessible. NMFS would accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments would be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Lynn Massey, West Coast Region, NMFS, at (562) 436-2462, lynn.massey@noaa.gov.

SUPPLEMENTARY INFORMATION: This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and regulations at 50 CFR 600.745, which allow

NMFS Regional Administrators to authorize exempted fishing permits (EFPs) to test fishing activities that would otherwise be prohibited.

At the June 2020 Pacific Fishery Management Council (Council) meeting, the Council voted to recommend that NMFS approve an EFP application titled, “*Year-round Coastwide Midwater Rockfish EFP: Monitoring and Minimizing Salmon Bycatch When Targeting Rockfish in the Shorebased IFQ Fishery, 2021-2022*” (herein referred to as the “2021 Trawl Gear EFP”) for the 2021 fishing year, and made the preliminary decision to recommend continuing the EFP project in 2022. The applicants (*i.e.*, the West Coast Seafood Processors Association, Environmental Defense Fund, Oregon Trawl Commission, and Midwater Trawlers Cooperative) submitted the application as a renewal request to continue EFP research conducted since 2017; the multi-year EFP project is collectively referred to as the “Trawl Gear EFP.” The Trawl Gear EFP project allows up to 60 vessels participating in the West Coast Groundfish Trawl Rationalization Program’s Limited Entry Shorebased Individual Fishing Quota (IFQ) Program to test whether removing certain gear, time, and area restrictions may impact the nature and extent of bycatch of protected and prohibited species (*i.e.*, Chinook salmon, coho, eulachon, and green sturgeon). Since 2017, NMFS has annually modified the suite of exemptions allowed under the Trawl Gear EFP project as certain groundfish regulations are lifted or revised. For a history of the authorized exemptions, see 81 FR 96437 (December 30, 2016) for the 2017 EFP, 82 FR 52882 (November 15, 2017) for the 2018 EFP, 83 FR 61603 (November 30, 2018) for the 2019 EFP, and 84 FR 56246 (October 22, 2019) for the 2020 EFP. Exemptions originally proposed by the applicants and published in the **Federal Register** notice for the 2020 Trawl Gear EFP were later modified to reflect regulatory changes to groundfish closed areas implemented via Amendment 28 to the Pacific Coast Groundfish FMP (*See* 84 FR 63966, November 19, 2019).

The modified 2020 Trawl Gear EFP exemptions are consistent with the exemptions requested by the applicants for the 2021 and 2022 Trawl Gear EFPs (see below list).

For the 2021 Trawl Gear EFP project, the application requests exemptions from the following limited entry trawl fisheries regulations:

- For vessels fishing with **bottom trawl** groundfish gear:
 - The requirement to use selective flatfish trawl gear, and the prohibition on using small footrope gear other than selective flatfish trawl gear between 42° and 40°10' North latitude (N) and shoreward of the boundary line approximating the 100 fathom (fm) depth contour (*See* § 660.130(c)(2)(i) and (c)(2)(ii)); and
 - The requirement that selective flatfish trawl must be a two-seamed net with no more than two riblines, excluding the codend (*See* § 660.130(b)(1)(ii)(A)).
- For vessels fishing with **midwater trawl** groundfish gear:
 - The prohibition on fishing outside the primary season dates for the Pacific whiting IFQ fishery (*See* § 660.112(b)(x) and § 660.130(c)(3));
 - The prohibition on fishing south of 40°10' N. lat. shoreward of the boundary line approximating the 150 fm depth contour (*See* § 660.130(c)(3)(ii) and (c)(4)(ii)(B)).
- For vessels fishing with **either midwater or bottom trawl** groundfish gear:
 - The prohibition on retaining certain prohibited species (*See* § 660.12 (a)(1)); and
 - The requirement to discard certain prohibited species at sea (*See* § 660.140 (g)(1)).

If NMFS approves this EFP, vessels fishing on an EFP trip with limited entry bottom trawl gear would be permitted to use any small footrope gear that meets the definition in regulations at § 660.11 between 42° N. lat. and 40°10' N. lat and shoreward of the 100 fm depth contour. Vessels fishing on an EFP trip with limited entry bottom trawl gear would also be

permitted to use both two- and four-seam selective flatfish trawl nets with two- or four-ribblines, excluding the codend. Vessels fishing on an EFP trip with limited entry midwater trawl gear would be permitted to fish south of 40°10' N. lat. shoreward of the 150 fm depth contour.

Additionally, vessels fishing on an EFP trip with limited entry midwater trawl gear would not be constrained to the Pacific whiting primary season dates in existing groundfish regulations.

Participating vessels would be required to carry observers or use a NMFS-approved electronic monitoring system on 100 percent of trips, as is currently required in the IFQ program.

Participating vessels would also be required to retain all salmon (excluding salmon already sampled by NMFS' West Coast Groundfish Observer Program) until offloading.

A goal of this EFP project is to collect information on the effects of lifting the restrictions described above on bycatch, including bycatch of Endangered Species Act (ESA)-listed salmon, eulachon, and green sturgeon. Previous analyses suggest that bycatch rates of these ESA-listed species could increase as a result of the changes in gear configurations from the Trawl Gear EFP. However, because a targeted fishery for chilipepper, widow, and yellowtail rockfish has not existed in more than a decade, and because the current groundfish trawl fishery has changed considerably in recent years, available data may have limited utility for predicting current impacts to protected and prohibited species in fisheries conducted with the exemptions that would be allowed under this EFP application being considered. NMFS staff worked with the applicants to inform their development of this EFP application, advising on what might increase the ability of fishery participants to target pelagic rockfish species while also minimizing bycatch to the extent practicable and ensuring adequate bycatch information can be collected. To address potential increased protected and prohibited species encounters, the Council recommended that EFP applicants adhere to area-based Chinook salmon bycatch limits for midwater trawl and bottom

trawl EFP vessels in 2021 and 2022. Under this proposal, if Chinook salmon catch on EFP trips for either gear type reaches the applicable bycatch limit, NMFS would revoke the EFP for that gear type for the remainder of the year. If this EFP is approved, NMFS would set a bycatch limit of 1,000 Chinook salmon north of 42° N. lat. and 100 Chinook salmon south of 42° N. lat. for vessels declared into the EFP, regardless of gear type. If either of these bycatch limits are reached, NMFS would revoke the EFP for both gear types in the respective management area (*i.e.*, north or south of 42° N. lat.).

The application includes a requirement to retain and land salmon bycatch on all EFP trips, consistent with current requirements for vessels participating in the shoreside Pacific whiting fishery. The intent of this provision is to provide a complete census of salmon bycatch for each EFP trip and maximize the amount of biological and genetic salmon samples. In the event that more salmon are landed than what the onboard observer can sample, the vessel would notify their respective state fish and wildlife agency upon returning to port to give them the opportunity to collect and sample the excess salmon bycatch.

The EFP applicants have not proposed a specific list of participating vessels, but consistent with previous years, are proposing that NMFS publish a public notice to gauge interest from limited entry groundfish midwater and bottom trawl vessels. Depending on the amount of interest and where vessels may be fishing, NMFS may need to limit participation by time and area to mitigate potential impacts.

Information collected under the EFP would be used to support analysis for potential new gear regulations and modifications to existing gear regulations. Because many of the current gear regulations have been in place for more than ten years, it is difficult for NMFS, the Council, and industry to predict the impacts of removing these regulations. In the past 10 years, the

industry has changed significantly. Reduction in capacity, innovations in gear technologies, and changes in management have all contributed to these changes. The information collected through the fishing under this EFP would help demonstrate what potential impacts, if any, today's fleet may have if some of the current gear, area, and time regulations are modified from what is currently in regulation. NMFS has already used data from the prior years of the EFP project to modify regulations that were no longer necessary due to changes in the groundfish fishery and the improved status of several overfished groundfish stocks. For example, data from the 2017 and 2018 EFPs helped modify regulations that restricted the use and configuration of trawl gear via a December 3, 2018 final rule (*See* 83 FR 62269).

NMFS is proposing to approve the 2021 Trawl Gear EFP, and preliminarily approve the 2022 Trawl Gear EFP, covering all the exemptions stated above, following the conclusion of the public comment period and review of public comment. NMFS would not issue another **Federal Register** notice soliciting public comment on renewing the Trawl Gear EFP for 2022 unless:

1) the applicants modify and resubmit their application to NMFS; 2) changes to relevant trawl fisheries regulations warrant a revised set of exemptions authorized under the EFP project; or 3) NMFS' understanding of the current biological and economic impacts from EFP fishing activities substantially changes. Pending approval, NMFS would issue the permits for the EFP project to the vessel owner or designated representative as the "EFP holder." NMFS intends to use an adaptive management approach in which NMFS may revise requirements and protocols to improve the program without issuing another **Federal Register** notice, provided that the modifications fall within the scope of the original EFP. In addition, the applicants may request minor modifications and extensions to the EFP throughout the course of research. NMFS may grant EFP modifications and extensions without further public notice if the changes are essential

to facilitate completing the proposed research and result in only a minimal change in the scope or impacts of the initially approved EFP request.

NMFS analyzed the potential effects of implementing the 2018 Trawl Gear EFP in an environmental assessment (EA), dated December 2017 (Available at: <http://www.westcoast.fisheries.noaa.gov>). In that EA, NMFS stated that it anticipated issuing additional, similar, one-year EFPs that would cover a portion or all of the components discussed in the EA. Those EFPs would be supported by the analyses in the EA, as long as there were not substantial changes to the affected environment (*e.g.*, status of the stock), components of the EFP (*i.e.*, gear, area, and time restrictions), or unanticipated effects on the environment from permitting fishing activities that were not discussed in the EA's analysis. Since the 2021 and 2022 Trawl Gear EFPs meet those criteria, NMFS does not anticipate any environmental impacts from the 2021-2022 Trawl Gear EFP beyond those analyzed in the EA for the 2018 Trawl Gear and future similar EFPs. NMFS welcomes public comment on the NEPA coverage for this EFP.

After publication of this document in the **Federal Register**, NMFS may approve and issue permits for the EFP project after the close of the public comment period. NMFS will consider comments submitted in deciding whether to approve the application as requested. NMFS may approve the application in its entirety or may make any alterations needed to achieve the goals of the EFP.

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

Dated: August 25, 2020.

Jennifer M. Wallace,

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National Marine Fisheries Service.